The Court: I have read them. Now, will you read the last question that I asked the witness?

(Record read)

The Court: Very well.

The Witness: My best answer, sir, is that the figure on Defendant's Exhibit III is just a reflection of the—

The Court: It is a reflection. It is a copy of the same figure, isn't it?

The Witness: The same figure, sir, but going to the source of the 202 rather than the uses to which it was put.

The Court: Well, going to the source. You see, you are not answering the question. The question is, is there included in that total of 202,000-odd dollars the sum of 27,200 which you have been asked about? And is it not a fact that 27,200 is a part of the 202,000 as shown on Government's Exhibit 362?

The Witness: Why I am so puzzled, sir, I don't know whether there is 27,200 or the sources from which (2190) the 27,200 is derived.

The Court: Now, you see, you are not paying attention to the question. You were not asked what sources it came from; you were asked whether the sum of 27,200 was in there, disregarding completely the source of it.

The Witness: Well, it would reflect the inclusion of that amount, yes, sir.

The Court: Well, the 27,200 is in the figure, isn't that what you say?

The Witness: There is an amount of 27,200 included, yes.

The Court: Yes. And when that 202,000 is taken

over and used as you did in your Exhibit III, it still contains the 27,200, does it not?

The Witness: Yes, sir.

The Court: Very well. Now, that is the question that Mr. Pierpoint asked you about seven minutes ago. Now, we have it that it does.

All right, go ahead.

By Mr. Pierpoint:

Q. Now, Mr. Sweeney, were you here when Mrs. Adoue testified? A. Mrs.—

Q. She is the lady who sold the house in Sands Point to the Costellos. A. Yes, yes.

(2191) Q. And she testified, did she not, that the sales price of the house was thirty thousand? A. Yes, sir.

Q. Now, Mr. Sweeney, I show you Government's Exhibit 199, which is the deed transferring the property, and that notes that the mortgage was $11,833.89; isn't that correct? A. That is correct.

Q. Now, would you take the figure thirty thousand and write it down there? And would you subtract from it the amount of the mortgage $11,833.89? And what does that give you? A. $18,166.11.

Q. Now I show you your schedule III and the item of disbursement for 1944, purchase of Sands Point property. What is the figure you have in there? A. $18,000.

Q. And the difference is $166.11? A. That is correct.

Q. Now we have the figure—the mortgage is 11,833.89. Will you write that down again somewhere because we are going to work with that one a little more. That is right there. Government's Exhibit 199.

$11,833.89, will you just write that one down again?

Now, on Government's Exhibit 362, under date (2192) of December 31, 1945, there is an item Mortgage Payable Sands Point $10,684.02, is that correct? A. Yes.

Q. Would you write that down underneath there? A. $10,684—

Q. And two cents. Now, just before we go any further, Mr. Sweeney, the exhibit number shown opposite that item is 201. Do you have any doubt that that was the principal amount of the mortgage on December 31, 1945, or do you want to go to Exhibit 201 to make sure? A. Well, let us proceed that it is.

Q. You will assume that it is. A. Yes.

Q. You have no question that that comes from Exhibit 201? A. Two naught—no.

Q. Now, will you make that subtraction, Mr. Sweeney? And you get a figure of $1,149.87 which represents payments on the principal of the mortgage from the time the property was bought until December 31, 1945, isn't that correct? A. Yes.

Q. Now, referring back to your Schedule III, you have a couple of items in here, mortgage payment Sands Point property, 1944, you have $768.88. A. That is right.

Q. And 1945 you have $1,073.46. A. That is correct.

(2193) Q. Would you add those two figures up for me, please? and the total you come to $1,842.34, is that correct? A. That is correct.

Q. And does that also represent payments on account of the principal on the mortgage? A. Yes, these are the figures taken from the testimony.

Q. Now, the way you reached those figures, Mr. Sweeney, was you took the testimony of Mr. Barclay that there was $1,099.01 paid on the mortgage in the year 1944, and you subtracted from that figure the amount that was interest payments, did you not, $330.13, and that gave you a figure of $768.88? A. That is correct.

Q. Now, for 1945 you take Mr. Barclay's figure of $1,572.30 and you subtract the interest payment, amount

that was interest, of $498.84, and you reach your result of $1,073.46, is that correct? A. That is correct.

Q. You agree, Mr. Sweeney, that something is wrong here? A. Well, I base my figures on the testimony.

Q. Mr. Sweeney, isn't it possible—in fact, isn't it a fact that those mortgage payments by the Costellos to the Home Life included more than just principal and (2194) interest; they also included some real estate taxes, didn't they, and some other items like insurance premiums and so forth, and wouldn't that account for the difference? A. Well, I —I take the position payments of that type would be in the expenditures schedule.

Q. As a matter of fact, Mr. Sweeney, they were, were they not? Let us look at the expenditures schedule, Government's Exhibit 362, Schedule C. We have a Home Title Mortgage Company, in 1944, $52.25, 1945, $189.83, and the expenditures shown as Exhibit 201 and the testimony shown as Mr. Barclay's testimony, is that correct? A. That is correct.

Q. And these real estate taxes as shown on Government's Exhibit 362, Schedule C-1, is that correct? A. That is correct.

Q. So that the difference is accounted for because those moneys were paid to Home Title Guaranty and Home Title Guaranty paid the taxes with the money, is that correct? A. That sounds correct, yes.

Q. So will you take that figure you have for mortgage payments of $1,842.34 and subtract from it $18,166.11, which is the figure we get by—I beg (2195) your pardon, not 18 —not 18,166.11—$1,149.87, which is the figure we get by working back from the mortgage, $692.47, that is what I get, Mr. Sweeney, and that amount would be duplicated in the expenditures side of your schedule III, is that correct?

Assuming that that amount is in this expenditure item taken from Government's Exhibit 362 of $312,007.33, that

figure of $692.47 should be added to the expenditures side of your schedule. Is that correct? A. No. I understood you to say that the expenditures that I have are higher.

Q. No. What I am saying is the expenditures you have are lower. A. I have the figure of $1,842.34.

Q. That is correct. Now, we will go at it another way to get this clear, then!

You figured the mortgage payments at $1,842.34, is that correct? A. Yes, sir.

Q. And by working back from the mortgage we figured the mortgage payments as $1,149.37. A. Yes, sir.

Q. So that makes a difference of $692.47? A. Yes, sir.

Q. And I suggested to you that that figure of (2196) $692.47 was already included in the expenditures. A. Yes, yes. Oh, wait. Excuse me. Which expenditure do you mean now?

Q. This figure of $312,007.73. A. Yes.

Q. That includes real estate taxes and that other item paid to Home Title— A. It includes— Yes, yes.

Q. So that your expenditure is too high, you are correct, by $692.47. A. Yes.

Q. I think we determined that the expenditure was too low by $166.11 because the purchase price of the house was not the $18,000 but the $18,166.11, is that correct? A. Yes. Yes.

Q. So will you subtract the $166.11 from the $692.47? and that gives you $526.36, by which your expenditure figure is too high; is that correct? A. That is correct.

Q. Now— A. I—

Q. Mr. Sweeney, under the receipts side of your schedule III, you have an item here of $290 for the year 1937 and you call it Refund by Jensen. Mr. Jensen was the man, was he not, from Brown, Harris & Stevens, the renting agents of 215 Central Park West? A. Yes.

(2197) Q. Or 115, I guess it is. So the item you are

talking about here is a refund from Brown, Harris & Stevens to the Costellos, is that correct? A. Yes.

Q. Down in the disbursements side you have this figure of $212,007.73, and that includes rent which the Costellos paid to Brown, Harris & Stevens, is that correct? A. That is correct.

Q. You got that figure from Government's Exhibit 362, right? A. Correct.

Q. Looking at Government's Exhibit 362, Schedule C, down here in the middle of the page we find Brown, Harris & Stevens, Inc., is that right? A. Brown, Harris & Stevens, yes.

Q. And for the year 1937 the Costellos are charged with expenditures of $305.84, is that correct? A. That is correct.

Q. Now, Mr. Sweeney, the rental on that apartment at that time was $297.92 a month, is that correct? I show you Government's Exhibit 258, which was introduced through Mr. Jensen of Brown, Harris & Stevens. A. It appears $297.92.

Q. So for the months of November and December, 1937, the rent would be twice that amount, is that correct? (2198) A. That is correct.

Q. Would you multiply that figure by two? It comes out to $595.84, is that correct? A. That is correct.

Q. Would you subtract this item you have up here under receipts of $290.00 from the figure? It comes out $305.84.

Will you read again the expenditures with which the Costellos were charged for 1947 on Government's Exhibit 362? A. $305.84.

Q. That is the same figure you have there, isn't it? A. That is correct.

Q. So your Schedule III is in error in including the $296 as a receipt in that year, is that correct? A. Based on the figures we have just been through, it does appear that allowance was made for it in the expenditures.

Q. Mr. Sweeney, under your column Receipts you have an item here under 1939, New York Life Insurance.

The Court: Are you going into a new item now?
Mr. Pierpoint: Yes.
The Court: We will take our midmorning recess.

(Jury retires.)

(Recess.)

(2199) (Jury present.)

By Mr. Pierpoint:

Q. Mr. Sweeney, on Schedule III, Defendant's Exhibit III, the year—under the column or the part of it which is labeled Receipts, you have an item New York Life Insurance Company, dividends, $474.78, is that right? A. Yes, sir.

Q. Now, that represents an item paid by the New York Life Insurance Company to Costello, is that right? A. Correct.

Q. Referring to the disbursements again, this figure of $312,007.73, which you got from Government's Exhibit 362, that figure would include premiums paid by Costello to the Life Insurance Company, is that right? A. That is correct.

Q. Now, turning to Government's Exhibit 362-C, that is Schedule C, which lists expenditures, we have an item here New York Life Insurance Company, and we are interested in the year 1939, is that right? A. That is correct.

Q. What is the figure shown for the year 1939 on there? A. $329.82.

Q. Do you recall what the yearly premiums were that were testified to by Mr. Lohse? Were you here (2200) when he testified? He was the man from the New York

Life Insurance. A. I was here but I don't recall the figure.

Q. Let us look at the exhibit that he brought with him and that was introduced, Government's Exhibit 241-B. We have here an item Premium $402.30, indicating that that is semi-annual premium, right? A. Yes, yes.

Q. Would you take $402.30 and multiply it by two? And that would be the yearly premium, $804.60? A. That is correct.

Q. Going back to Defendant's Exhibit III, would you take the amount of this dividend, $474.78, and would you subtract that from the yearly premium? and what do you come up with? A. $329.82.

Q. Mr. Sweeney, isn't it a fact that that is the same amount which is shown as an expenditure in 1939? A. Yes, $329.82.

Q. So that you have $474.78 too much in your receipts on that one, too, is that correct? A. I would say it is not too much in the receipts but it appears that it has been allowed for in the disbursements.

Q. So if there isn't too much in the receipts, (2201) there is too little in disbursements. A. That seems to be correct.

Q. So your schedule is in error by the amount of $474.78 for that item? A. Apparently so.

Q. You don't have much doubt about that, do you? A. No.

Q. Mr. Sweeney, referring again to the schedule III and the figure you have back here as cash balance December 31, 1945, $84,044.27, will you write that down on your pad, sir?

The Court: What is that figure?

Mr. Pierpoint: $84,044.27, your Honor.

The Court: That is that ultimate figure?

Mr. Pierpoint: That is the ultimate figure, cash balance.

Q. (Continuing) You said that that included—

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The Court: Pardon me just a minute.

I am sorry if the window bothers any of the spectators, but I want that window open because it helps to keep it a little more comfortable for the jury.

Q. (Continuing) You said that that figure includes the bank balances. So let us take the bank balances as shown on Government's Exhibit 362 of $29,506.71 and let us subtract it.

(2202) The Court: Pardon me just a minute. I lost the trend of the question. Would you read the last question or two?

(Record read)

Q. (Continuing) And what do you come up with? A. $54,537.56.

Q. Now will you take the $27,200 and subtract that? And what do you come up with? A. $27,337.56.

Q. Will you take the $765 bond redemption that you included in error in the receipts and subtract that $765? A. The receipts there would be correct. It is purchases that would be—

Q. Either way, will you subtract out the $765? And what do you come up with? A. $26,572.56.

Q. Will you take that item of $17,636.40 and subtract that out? A. 17,000—

Q. 636.40. And what do you get to now? A. $8,936.16?

Q. I agree with that one. Will you subtract out the $417.74 item, Crescent? $417.74.

What do you come up with? A. $8,514.42.

Q. I come up with $8,518. I believe you do, too, sir. A. I just read that wrong, that 518—

(2203) Q. $8,518.42. A. Check.

Q. Now, will you subtract out the $5,500 in the Kastel partnership? And that one is? A. $3,018.42.

Q. That checks. Now, will you add in that mortgage item of $526.36? This is in addition; right? A. Right. $3,544.78.

Q. That checks. Now, will you subtract out the $290 payment from Brown, Harris & Stevens which was already accounted for? And what does that give you? A. $3,254.78.

Q. Now, will you subtract out the $474.78 from the New York Life Insurance Company which was already accounted for? And what figure do you get? A. Twenty-seven eighty.

Q. $2,780? A. Yes, sir.

Q. I refer you back to Defendant's Exhibit III to this item of Fonovision which is in here as a receipt in 1943, redemption of Fonofilm stock. What is the amount of that item? A. $2,780.

Q. Suppose you subtract that one, you come to zero, do you not? A. On that, yes.

Q. So that if your assumption is wrong that that stock didn't cost $2,780, we come down to zero; is that (2204) correct? A. Based on that assumption, yes.

Mr. Pierpoint: Your Honor, because of the shortness of time, Mr. Seymour dealt with the second set of schedules?

The Court: Very well.

Mr. Seymour: Have you got Defendant's Exhibit JJJ?

By Mr. Seymour:

Q. Mr. Sweeney, so that I can understand the theory of this cash receipts and disbursements methods on which these schedules are based—

The Court: Which schedules do you mean now? III and JJJ?

Mr. Seymour: I am referring to JJJ, your Honor, for this purpose.

The Court: Very well.

Q. As I understand it, your procedure is to take the cash balance at the beginning of the year, add in the cash receipts during the year; and then subtract out the cash disbursements during the year, and you come to the cash balance at the end of the year? A. That is correct.

Q. And given any three of those elements, you can figure out what the fourth one is, isn't that right? (2205) A. That is correct, yes.

Q. So, for example, if you had, say, $300 at the beginning of a year and you had cash receipts of $850, that would give you a total of $1,150 cash receipts plus cash on hand? A. At the beginning.

Q. Yes. A. Yes.

Q. Then if you had cash disbursements, say, of $950, can you figure out from that what the cash balance would be at the end of the year? A. Yes.

Q. What would it be? A. What was your figure of balance plus receipts?

Q. $300 at the beginning of the year, cash receipts of $850 and your disbursements of $950. A. Two hundred.

Q. $200 would be the cash balance at the end of the year? A. That is correct.

Q. Now, you can work for the other elements, can't you? For example, if you had cash on hand at the beginning of the year which you knew, say, $700, and cash on hand at the end of the year which you knew, say $800, and you knew that your cash receipts were $1,100, couldn't you figure out what your disbursements must have been? A. Yes.

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Q. Will you figure it, please? A. Yes. You (2206) have 1,100 receipts?

Q. Yes. A. $1,000.

Q. That would be your cash disbursements, since you knew what the cash was at the beginning and end of the year and what the receipts were. A. Yes.

Q. And you can also figure out your receipts that way, can't you? A. Yes.

Q. So, for example, if you had cash at the beginning of the year of $200 and cash at the end of the year of $700 and your cash disbursements, say, were $1,150, could you figure out what the receipts were during the year? A. The bank balance increased 500?

Q. Yes. That is, you had cash at the beginning of 200 and at the end of 700, so that there would be an increase. A. $1,650.

Q. Pardon me? A. $1,650.

Q. That would be your cash receipts for that year. Actually you can refine it a little bit, can't you; say, for example, you knew your full elements of cash balance at the beginning of the year and the full amount of your cash balance at the end of the year and the full amount of your disbursements, but you only knew ahead of time a fraction of your receipts, you could actually figure out what the balance of the (2207) receipts was, couldn't you? A. Yes.

Q. For example, if you began the year with a cash balance of $800 and you had a cash balance at the end of the year of $700 and you knew that your cash disbursements during the year were $1,100 and you also knew that some of your receipts amounted to $600, you could figure out what the rest of the receipts were, couldn't you? A. Yes.

Q. Could you figure that, and would you? A. I would say about $400.

Q. And that 400, together with the already known re-

ceipts of 600 would make up a total of $1,000 receipts for the year? A. Correct.

Q. Now, in fact, that is the general system, or that is the system that you followed on Defendant's Exhibit JJJ? A. No, no.

Q. Well, excuse me. On Defendant's Exhibit JJJ you do have those three elements shown, isn't that correct—your cash balance at the beginning of the year, your cash receipts during the year, your cash disbursements during the year, and your cash balance at the end of the year? A. That is correct.

Q. And what you have been computing on the schedule is from the first three what the last one is, (2208) is that correct? A. Correct, yes.

Q. So that it does fall under that theory, that is, the general theory is that you take three of the known elements to figure out the fourth? A. Yes.

Q. Now, looking at Defendant's Exhibit JJJ, Mr. Sweeney, the very first line is the cash balance at the beginning of the year, starting out, as you computed it on your other schedule III, is that right? A. Yes.

Q. So that your cash balance for 1946 is $84,044.27? A. Yes.

Q. And that comes from that other schedule? A. Correct.

The Court: III.

Mr. Seymour: Yes, your Honor.

Q. And, of course, the accuracy of these computations turns on the accuracy of that earlier schedule with respect to the opening cash balance? A. Well, surely, yes.

Q. After the cash balance you have totaled up all the cash receipts? A. Correct.

Q. That you put on the schedule. A. Correct.

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Q. And then you have taken a total of your opening cash balance plus the cash receipts that you (2209) put here, you computed that; is that correct? A. That is correct.

Q. For the year 1946, here, that is the figure $169,488.75? A. Yes.

Q. And then you proceeded to put in the cash disbursements for that year, for the particular year, referring to the first column in 1946. A. That is correct.

Q. And then at the end of that column you have totaled up the cash disbursements for the year and subtracted that from the total of the opening cash balance and the cash receipts during the year which have been added up on the schedule? A. That is correct.

Q. And then the balance at the end of the year is what you compute the cash balance to be on the basis of taking those three elements? A. That is correct.

Q. Now, when this schedule was first introduced, Defendant's Exhibit JJJ, I believe we went over each of the items and you identified them as coming from various exhibits. A. That is correct.

Q. For example, the salary of 79 Wall Street Corporation, which is shown in all four years, 1946, (2210) 1947, 1948, and 1949, you took from Government's Exhibit 363-F, is that right? A. Salary; that is correct.

Q. And that is true, you got the salary from Beverley Country Club and cash drawings from Louisiana Mint, cash drawings from Crescent Music Company, interest income, George M. Levy, miscellaneous income, and income from R. L. Morris lease—all of those are specifically identified receipts which you have taken from the various exhibits in evidence listed over on the right-hand column. A. Correct.

Q. Now, going down a little further, partial repayment of loan to Beverley Country Club, that is shown in 1948, you have got an Exhibit No. 158, is that right? A. That is correct.

Alfred E. Sweeney—for Defendant—Cross

Q. And partial repayment of loan, Crescent Music Company by Loretta Costello, which took place in 1948, you have got an exhibit number there, 141? A. Correct.

Q. United States Savings Bonds redeemed, you have got all four years; that came from Schedule 363-B, is that correct? A. Correct.

Q. Sun Life Assurance Company dividend; the same thing, only 363-E, is that right? (2211) A. Correct.

Q. And also the Federal income tax refunds were also on that Schedule 363-E. A. That is correct.

Q. Loans from Frank Erickson is Government's Exhibit 363. A. Correct.

Q. Return from Consolidated Television is from the testimony of Mr. Wolf, is that right? A. That is correct.

Q. Return of cash from City Property Clerk, that is from Schedule 363-B, and the testimony of Mr. Wolf? A. That is correct.

Q. On Title Company refund from Exhibit 201-A; right? A. That is correct.

Q. Funds other than drawings from Crescent Music Company deposited by Loretta Costello, that is shown in all four years, that is Exhibits 43, 44, 45, 46, 47—what is that last one? A. 96. 122-A through G.

Q. And 136? A. Yes.

Q. Now, let me see. The forty series there, that is, 1943 through 1947, those are the records from the bank, is that right, the ledger sheets and the deposit tickets? A. I believe so, yes.

Q. And 96 and 122-A to G and 136, those are payments (2212) from Crescent Music Company? A. That is correct.

Q. The checks? A. Yes.

Q. And that is what these entries are based on? A. Yes, on the bank statements, deposit tickets and checks from—

Q. Crescent Music Company. A. Crescent Music, and maybe something else, but those—

Q. Now, what do you mean, "maybe something else"? Haven't you shown the exhibits over here that it was based on?

The Court: Will you keep your voice up, please, everybody?

Mr. Seymour: Excuse me.

A. These are the exhibits, yes.

Q. And this next line, deposits from unknown source by Frank Costello, that is in '46 and '49, from Government's Exhibit 361 and 361-C, is that right? A. Yes, sir.

Q. Return of telephone deposit, which is 1949, is from Government's Exhibit 363-B, and Dendo refund again in '49 is from the testimony of Mr. Dendo? A. That is correct.

Q. Similarly, on the disbursements you have picked (2213) them up from various Government's exhibits, except, as I understand it these reductions here and the disbursements you are taking out, is that correct? A. Yes, there has been an adjustment at the end for that.

Q. Now, I wonder, Mr. Sweeney, if you would go over with me your computation in arriving, sir, at this figure of $3,456.48 in 1949 on the line Funds other than drawings from Crescent Music Company deposited by Loretta Costello. A. Yes. May I have the—

Q. Exhibits? A. And bank statement.

Q. Surely. A. And checks from Crescent.

Q. All right, fine. Here is [illegible] to start with. Mr. Sweeney, I notice that Government's Exhibit 96, which you have got on that schedule, has never been received in evidence, and I believe when it was identified it was identified as a deposit ticket on the account of George Wolf Special. Couldn't that be an error, or perhaps we have read it incorrectly? Could it be another number? A. Wait a minute. Yes. It appears to be 96, but—

Q. I show you 96 for identification. I don't believe you used that, did you? A. No, this has no relation to it. Perhaps I should (2214) check that number.

Q. All right. Would you, please? A. Yes.

The Court: Now, there is a spectator down in the court room reading a newspaper and the bailiff has just spoken to him. I wish he would stop it, because if you wish to read a newspaper you may not stay in the court room. No spectator is obliged to remain, and if the evidence or the proceedings become boring, he is invited to leave, and if he doesn't observe the rules of the court, he will be required to leave.

I am sorry to interrupt you. Go ahead.

Q. Mr. Sweeney, I bet we can save time here on this. My computations are that in 1949 there were total deposits in Mrs. Costello's account of $19,637.64, and you show $3,456.48 on Exhibit JJJ, isn't that right, for 1949? A. It is the year 1949 you are interested in?

Q. Yes, sir. A. Then the figure you have given me is the total deposits for '49.

Q. Yes. And I compute the difference—well, why don't you compute the difference? Do you get $16,181.16? A. Yes, yes.

Q. Now, let me see if I can refresh your recollection on the reasons for that difference. Isn't (2215) it a fact that the difference is explained by the Sun Life Insurance dividend check of $42.80 which you have already shown on the schedule? A. I had already shown that, so I have eliminated it, yes.

Q. And the same thing with the Dendo refund of $138.36? A. That is correct.

Q. And that leaves a balance of 16,000, I believe? A. Yes.

Q. And, as I understand it, that amount was eliminated because you could trace those deposits from Mr. Costello's account? A. Yes, those are transfers from Mr. Costello's account to Mrs. Costello, so I eliminated those.

Q. If you had left them in they would have been duplications of his receipts? A. That is correct. I wanted to avoid that duplication.

Q. Very good. Similarly, in 1948, Mr. Sweeney, my calculation in connection with the total deposits in Mrs. Costello's account was $42,744.40. A. $42,744.40.

Q. And there was a return of the loan from the Crescent Music Company of $12,258. A. I have to deduct that because—

(2216) Q. Yes, you have to deduct it. A. —it has already been included. $12,000—here it is. 12,258. $30,486.40.

Q. Now, actually you have shown on your schedule $12,743.60, isn't that right, for 1948? A. Yes, as a portion of the deposits in her bank account, yes.

Q. Can you tell me what the difference is? Calculate it.

Mr. MacMahon: Would you speak up, please? We can't hear you back here.

Mr. Seymour: Sorry.

A. I make it $17,742.80.

Q. Now, am I wrong, Mr. Sweeney, that that includes $42.80 from Sun Life which you have already shown and you didn't want to duplicate? A. Correct, yes.

Q. And then am I wrong that they were transfers identifiable from Mr. Costello's account to Mrs. Costello's account of $17,700 and that washes out the difference? A. There were amounts drawn from his account, the same amounts and the same dates, and while I had no definite proof I thought that in order to not overstate these receipts that I should allow and not include those items.

(2217) Q. That was to again avoid possible duplication? A. Yes.

Q. Because since it was already in his account, transferred over, it might have been these earlier receipts—in fact, it would have been the earlier receipts to the extent that those earlier receipts had gone into his account? A. That is correct. I wanted to avoid that duplication or possibility of it.

The Court: Yes, all right; keep your voice up, now.

Q. Now, going to 1947, Mr. Sweeney, the total deposits there I believe were $19,883.37. You show $18,683.37, a difference of $1,200; and my guess is, and correct me if I am wrong, that the reason for the difference is that because of the faint transcript you missed one of the deposits of $1,200. Wouldn't that explain it? A. No, that doesn't seem to—

Q. Would you tell me, then, the reason for taking out the $1,200? A. I would have to refer to one of my work papers. Let's see. Maybe I can do—

Q. Do you have your work papers here, Mr. Sweeney? Mr. Sweeney, do you have your work papers here? A. I have a notation, yes.

(2218) Q. Well, why don't you refer to it? A. May I get the work papers?

Q. Certainly. A. (Witness leaves stand.)

The Witness: I am quite sure it must have been because one of the items matched, perhaps, with a withdrawal.

Q. So you have reduced that by $1,200 to accommodate for a withdrawal from Frank Costello's account to be de-

posited in Mrs. Costello's account? A. Yes, because we have the same deposit total.

Mr. Fennelly: If I may be of assistance on the subject, I think you will find a withdrawal from the Costello account of $2,000 on that day and a deposit in Loretta's account of $1,200 on the same day.

Mr. Seymour: Thank you.

The Witness: Yes.

Mr. Seymour: That explains it.

The Witness: Yes, I rather thought that is what it was.

Q. So 1947 we have reduced the amount by $1,200 to avoid duplication? A. That is correct.

Q. Would you refer to 1946, please? A. Yes.

Q. As I compute it, the total deposits were $24,889.73, and then, as I compute it, you have got (2219) drawings from Crescent on your schedule JJJ of $11,500. A. Yes, they had to be deducted to avoid duplication.

Q. Yes. Would you deduct them, please, and tell me what the balance is? A. $14,389.73.

Q. That is exactly what is shown on your schedule, is that right, for 1946, shown on Schedule JJJ? A. That is correct.

Q. In 1949, then, Mr. Sweeney, in putting these deposits in on Mrs. Costello's account, you have reduced the total amount of the deposits by $16,000 to include—to take out transfers of money from Mr. Costello, is that right? I believe that is what you said. A. Yes, that is correct.

Q. In 1948 it was $17,700. A. That is correct.

Q. In 1947 it was $1,200 and in 1946 it was zero. A. Correct, that is right.

Q. You have made no allowance in 1946 for money given

—deposited that came from Mr. Costello? A. No. There were no traceable amounts.

Q. By that you mean— A. From one bank—

Q. —account to the other— A. —statement to the other..

(2220) Q. And it is on that that you base it? A. Yes, yes.

Mr. Seymour: May I have Exhibit 48, please?

Q. You remember the testimony of Mr. Hitchcock, don't you, Mr. Sweeney, the man from the Corn Exchange Bank, who was assistant branch manager? A. Generally. Yes, yes.

Q. You may recall that while he was testifying he prepared a tape on the basis of the deposit tickets that he was able to find on Mrs. Costello's account, which were put in evidence, and he prepared a tape breaking down those deposits to show how much was by check and how much by cash. A. I recall that, yes.

Q. And that tape was introduced in evidence as Government's Exhibit 48. A. I recall it.

Q. Let me show you that exhibit, Mr. Sweeney, and starting first with 1949, can you tell me how much of the deposits in Mrs. Costello's account of $3,456.48 was in cash to the extent that we know it from the deposit tickets we have found? A. Just a moment.

(A pause.)

A. (Continuing) 1,500.

Q. $1,500 of the 3,000-odd was in cash? A. Yes.

(2221) Q. Can you give me the same type of information with respect to the $12,743.60 shown for 1948, referring to Defendant's Exhibit JJJ?

The Court: Pardon me. What was the amount again for 1949?

Mr. Seymour: Your Honor, the total amount—

The Court: No, I wanted to get that from the reporter. What was the witness's answer, was it 1,200 or 1,500?

(Record read.)

The Court: All right, go ahead. Excuse me.

You have asked for the same figure, how much was cash in 1948?

Mr. Seymour: Yes, your Honor, of the amount shown on the schedule.

The Court: Yes.

A. 11,021, I make it.

Q. 11,021 flat, even? A. Yes.

Q. That is, of the total amount of $12,743.60 shown under 1948 on Defendant's Exhibit JJJ $11,021 of that amount is in currency, is that right? A. That is correct, yes.

Q. Could you make the same computation for 1947, please, Mr. Sweeney? A. It appears it would be $18,030.

(2222) Q. Is that what you compute it to be? A. Yes.

Q. Of the total amount shown on the schedule, $18,683.30, you compute $18,030 of that to be in currency? A. Yes, sir.

Q. Finally, Mr. Sweeney, I wonder if you would compute that—make that same computation for 1946. A. $9,000.

Q. $9,000 of the total amount shown on the schedule for 1946 was in currency? A. That is correct.

Q. Mr. Sweeney, I am having a little difficulty understanding this escrow business about money that is lost.

If a man spent, say, $900 during a year on hard goods, things where the money was gone, and in addition he lost $100 which somebody else found and held onto beyond the end of the year, as I understand it, you would figure that should be receipts of $1,000, a total receipt of $1,000 in that year; that his disbursements were $900; and that his cash on hand at the end of the year was this $100 which somebody else was holding in escrow; is that right? A. You are giving an example now?

Q. Yes.

Mr. Fennelly: I object to the example, your Honor, because this money was found within, I think, an (2223) hour of the time it was lost.

Mr. Seymour: I don't believe it was returned until after the end of the year.

Mr. Fennelly: The money was held there. You would still have it.

Mr. Seymour: That is my point.

Q. It is being held now in a safe, if you will, beyond the end of the year. A. All right.

Q. Do I understand correctly that you would have receipts of $1,000 in that year, disbursements of $900 in the year, and then a cash balance of $100, which would be this amount which is in a safe; is that right? A. All right.

Q. Well, is that right? A. Let's see. Your example was that the man received a thousand—

Q. Yes. A. Right?

Q. Yes. A. And spent 800?

Q. 900. A. 900.

Q. And lost the other 100, but not completely; somebody found it and is holding onto it for him. A. Yes. Well, yes, he still has that held aside.

Q. Just held aside. A. Yes.

Q. So you would compute that his cash balance at the end of the year was $100? A. Yes.

(2224) Q. Let us take the following year: He would start out with a cash balance of $100, is that correct? A. That is correct.

Q. Then, if the fellow who finds the money and has been holding it for him, returned it to him, would he have a receipt of another $100? A. No, he wouldn't.

Q. He wouldn't? A. Under that example.

Q. Assuming he didn't have any other receipts or any other disbursements, he wouldn't wind up with $200 at the end of the next year, would he?. A. No, it would be the same. You mean he just received back part of what he had at the end of the year?

Q. Yes, he received back that amount that was lost and had been held in a safe. A. Under the example, it would not be—

The Court: Would not be what?

The Witness: A receipt.

The Court: He would wind up the second year, assuming there was no other receipt of any other receipts, with a balance of $100 and not a balance of $200?

The Witness: Correct, sir.

Q. In the case of this taxicab money, Mr. Sweeney, as I understand it, you treated that the same way in terms of, at the end of the year, was part of the cash (2225) balance, although in escrow? We have established that, I believe, that year in which it was lost. A. The year in which it was lost? I gave no—

Mr. Fennelly: Go ahead.

A. I gave no effect to it in that year.

Q. But it is still accounted for there.

Mr. Fennelly: If your Honor please, they are talking about the wrong schedules. Mr. Sweeney first gives it as a receipt on his schedule of the year 1947, not before.

The Court: Do you desire to go ahead with your question, Mr. Seymour?

Mr. Seymour: Your Honor, I believe it has been—

Q. Well, let us assume, to avoid difficulty about this, let us assume that in the period from 1937 through 1945, your schedule did in fact show such a receipt of $27,200, as an assumption now. A. Just assume that it did?

(2226) Q. Yes, and assume that that money was lost and you had not taken out a disbursement against it, it would appear in the cash balance at the end of that period, isn't that right? A. That would be true, yes.

Q. And it would stay in the cash balance until it was actually spent, isn't that right? A. That is correct.

Q. So, assuming further that the $27,200 was received in the period from 1937 to 1945 and was lost in that period and held in escrow and was in the cash balance at the end of the period, and then that it was returned in 1947, when it was spent, up until that time it would still be in the cash balance, isn't that correct? A. Yes.

Q. Now— A. But—

Q. Yes, sir? A. But not in my cash balance because I didn't treat it as a receipt until—

Q. We are having a little difficulty about that.

The Court: You didn't treat it as a receipt when?

The Witness: Until 1947.

Q. I don't want to reopen that question, Mr. Sweeney, and, therefore, I am trying to do it on the basis of an

assumption. With that assumption, it (2227) would be correct that that amount, $27,200, would still be in the cash balance at the beginning of the year 1947, isn't that right?

A. Yes, sir.

Q. Therefore, according to the little example we were talking about a little while ago, and following this assumption that I have just given you in 1947, when you give on your schedule JJJ an additional receipt of $27,200— A. Yes.

Q. —you would have given it to the defendant twice but only spent it once, is that correct?

Mr. Fennelly: Just a minute. I object because the assumption is unfounded.

The Court: Overruled.

Mr. Fennelly: The Government—excuse me—

The Court: Overruled.

Mr. Fennelly: —your Honor.

The Court: You may take the witness on redirect examination. He is asked to make an assumption, which he did.

Read the question.

(Question read.)

Mr. Fennelly: I have a further objection, your Honor, on the ground that this is a duplicate cross examination on the exact same subject matter we went over yesterday.

(2228) The Court: Overruled.

A. On the basis of your assumption, yes.

Q. And if that assumption were correct, Mr. Sweeney, assuming, say, that the jury were to find that assumption to be correct, your schedule, JJJ, would be wrong for 1947

y $27,200, isn't that correct? A. Now, let's see. Well, didn't include it as a receipt.

The Court: No, but there we are again.

Repeat the question to the witness.

The Witness: Perhaps I misunderstood.

The Court: Yes, you apparently did.

(Record read as follows:

"Q. And if that assumption were correct"—)

The Court: "If" is the operating word there. Bear that in mind.

The Witness: Yes.

The Court: And then what follows, according to the question, bear in mind that you are being asked to assume something.

The Witness: Yes.

(Question read.)

The Witness: The assumed schedule would be wrong.

The Court: What assumed schedule?

(2229) The Witness: He assumes, sir—

The Court: You are being asked, Mr. Sweeney, on the assumptions here. The findngs here are going to have to be made by the jury. All I am trying to do is get along here and get responsive answers.

You have been asked to assume certain facts and on the basis of those assumptions, plus certain other matters which you have testified to, to say whether or not, not an assumed schedule, but the very schedule which you have introduced, which was introduced through you, and which you said you produced, would be accurate or inaccurate.

Let us not get off on some assumed schedule. The only assumption here is that matter of including the $27,200 in the cash balance of $202,000.

Read the question to the witness.

(Record read as follows:

"Q. And if that assumption were correct, Mr. Sweeney, and assuming, say, that the jury were to find that assumption to be correct, your schedule, JJJ, would be wrong for 1947 by $27,200, isn't that correct?")

The Witness: I am afraid I can't answer it.

The Court: What is there that bothers you?

The Witness: Well, sir, what bothers me is (2230) that I haven't stated it in my earlier statement prior to 1945 as a cash receipt, as a separate item of cash receipts.

The Court: Do you understand what the word "assume" means, Mr. Sweeney?

The Witness: Assume that it were in my schedule?

The Court: Yes.

The Witness: Oh!

The Court: Yes. You are an experienced witness, are you not, Mr. Sweeney?

The Witness: On the basis—

The Court: Just a minute.

The Witness: That is correct.

The Court: You are an experienced witness?

The Witness: That is correct.

The Court: You have testified here that you have testified as an expert on behalf of the Government in many cases?

The Witness: That is correct.

Alfred E. Sweeney—for Defendant—Cross

The Court: You were asked to make an assumption and, on the basis of that assumption, to tell us whether or not your schedule JJJ would or would not be accurate. That is all we want, and we want to save time while we are doing it.

Let us have the answer, whatever it is; I don't (2231) know, but let's have it.

The Witness: Yes, on the basis of that assumption, it would not be, your Honor, accurate.

The Court: Very well.

You mean your schedule would not be accurate on that assumption?

The Witness: On that assumption, yes, sir.

The Court: Very well. Let us get along.

Q. In fact, Mr. Sweeney, with respect to all the elements for each year, the starting three elements, the cash balance, the receipts and the disbursements for each year as shown on Government's Exhibit JJJ, if there were an error in any one of those elements, it would affect the entire schedule to the extent of that error? A. To the extent of an error, it would follow through, yes.

Q. Let me show you what I mean, for example. Let us take a small one here. This receipt for 1949, Dendo refund of $138.36. If that amount were not properly balanced out by a disbursement to make it fairly reflect the receipts and disbursements of the defendant, that column would be in error by that much, isn't that correct? A. If I understand, if there were a receipt and a disbursement with only one—

Q. Only the receipt were shown on your schedule? (2232) A. Yes, that would result in an error.

Q. Let us take a look at that Dendo—

The Court: Would what? I didn't hear the answer.

The Witness: It would result in an error to that extent.

Mr. Seymour: Page 1365.

Q. On that item, Mr. Sweeney, as shown under Defendant's Exhibit JJJ, I believe you said that amount was based on the testimony of Mr. Dendo, is that correct, the amount of $138.36, the Dendo refund? A. Yes.

Q. Do you remember Mr. Dendo testifying? A. Not definitely.

Q. You were certainly familiar with it enough to be able to prepare this schedule? A. I did look it up at the time, yes.

Q. Do you remember these questions and answers being put to Mr. Dendo:

"Q. And in 1949 she paid a premium of $322.61, is that correct?"

Mr. Dendo gave the answer, "Yes, sir."

"Q. But she was issued a refund because the policy was canceled? A. Yes, sir.

"Q. And the amount of the refund was $138.36? A. Yes, sir."

(2233) And that is the amount you have shown on your schedule? A. Correct.

Q. "Q. Leaving a net payment by her in the amount of $184.25, is that correct, sir? A. Yes, sir.

"Q. In the year 1949? A. That is correct."

Now, Mr. Sweeney, if the yearly expenditures, as computed by the Government, and as shown on your schedule JJJ under the year 1949, in the amount of $96,091.71 had taken into account that refund and had just based that computation on the net amount, you would have given too

much credit in your cash receipts side of the schedule, isn't that correct? A. Well, it is true that if the amount on the disbursements schedule is a net amount, then there would have to be an adjustment made to allow for that $138.36.

Q. In fact, there was just such a computation on the Government's schedule, isn't that correct? Wasn't it the net amount that that expenditure was computed on? A. I wasn't aware of it. I would have to—

Q. Didn't you— A. —take a look.

Q. —put in that figure on the basis of the Government's schedule? A. No, on a review of the testimony.

Q. Now, Mr. Sweeney, my question is, did you not put in the figure of total expenditures for 1949 on your (2234) schedule JJJ from Government's Exhibi' 363 as shown— A. Yes, sir.

Q. —in the righthand column? A. Yes, sir.

Q. Let me call your attention, Mr. Sweeney, to page 2 of schedule D of Government's Exhibit 363 showing the Government's computations of the expenditures for Harry Dendo & Son, particularly calling your attention to the amount under 1949 of $184.25. Isn't that what Mr. Dendo said was the net amount?

The Court: What page, please?

Mr. Seymour: Your Honor—

The Court: I have it. Page 2 of schedule 363-D.

Mr. Seymour: Yes, your Honor.

Q. Do you want me to show you the testimony again, Mr. Sweeney? A. No, I think recall. He said he issued the check—

The Court: Will you keep your voice up, please? I don't hear you.

A. Am I correct in stating that the testimony said refund check?

The Court: Do you want the testimony? Or do you want the question read? Is that what it is? Or if you are answering, keep your voice up a little bit; I just don't hear you.

The Witness: Yes, your Honor.

(2235) A. Might I see the testimony again, please?

Q. Certainly (showing). A. Well, I can see that the Government has used a net amount in its expenditure schedule.

The Court: What was the question? Read the question.

(Record read.)

A. Yes.

The Court: All right.

Q. Now, Mr. Sweeney, with respect to this particular item, apart from any adjustments whatsoever now, in point of fact is not your schedule JJJ, Defendant's Exhibit JJJ, actually in error to the extent of including this receipt and not taking out the corresponding disbursement? A. There should be an adjustment made to adjust for this amount.

The Court: Pardon me. Will you read the question?

(Question read.)

A. Yes.

Mr. Seymour: No further questions, your Honor.

The Court: It is about five minutes of one, Mr. Fennelly. Would it inconvenience you if we waited until after the recess to have your further examination?

Mr. Fennelly: Not at all, sir.

(2235a) The Court: We will adjourn now, ladies and gentlemen to 2.15.

Remember the instructions I have been giving you, don't talk about the case among yourselves or with anybody else, and don't be looking in the newspapers for any evidence. 2.15.

(Recess to 2.15 p.m.)

(2236) AFTERNOON SESSION

(Jury present)

ALFRED E. SWEENEY, resumed.

The Court: Whenever you are ready, Mr. Fennelly.

Redirect Examination by Mr. Fennelly:

Q. Mr. Sweeney, in preparing Defendant's Exhibit III, you used, did you not, the Government's Exhibit 362? A. That is correct.

Mr. Fennelly: Might I have 362?

(Exhibit handed to Mr. Fennelly)

Q. And in Government's Exhibit 362 there is an item on the bottom of the page saying Investments and Ex-

penditures of Frank Costello in excess of reported gross income as claimed by the Government.

Now, to make an investment you must spend money; right? A. Yes, sir.

Q. So, at the heading of the column it is stated the $202,865.81, according to their computation, has been expended between the period ending 1945; correct? A. Correct.

Q. And it is based on that expenditure that you picked out the same figure in your Exhibit III, is that (2237) correct? A. That is correct.

Q. Now, you based your schedule upon the Government schedule; right?

Mr. MacMahon: Your Honor, I object to these questions as leading.

The Court: Overruled.

A. Yes, sir.

Q. And if the Government statement is incorrect, then, naturally so is yours to the extent that the Government is incorrect, isn't that so? A. Yes, sir.

Mr. Fennelly: Now, I would like those assessments, please, for identification.

I now renew my offer, your Honor, of Defendant's Exhibits F—D, E, F, G and H for identification.

Mr. MacMahon: We object to them, your Honor, on the ground that they are irrelevant and immaterial to the issues here and get into a collateral issue. It is the same matter we discussed the other day at some length with the court.

The Court: I thought you were coming up to make an argument. I take it you—no, I just didn't want to cut you off. I am prepared to make a rul-

ing, but I didn't want to do it if you desire to add anything you have to say.

(2238) Mr. Fennelly: Yes, I would develop—

The Court: No. Do you have anything now to say other than you said the day before, or the first day we considered these, when we did it out of the hearing of the jury?

Mr. Fennelly: Oh, yes.

The Court: I will excuse the jury for a few minutes while we argue this question of law.

(Jury retired)

Mr. Fennelly: Now, may it please the Court, the Government has cross examined this witness as to taking the figure from their schedule of $202,000; I have offered in evidence assessment by the Government for the period 1941 through 1945 which shows that the Government claimed that Costello had roughly $295,000 worth of additional income during that period.

The Government's schedule, and this was the nature of the argument the other day, showed $202,865.81, on their Exhibit 362, as being the investments, which is an expenditure, and expenditures of that sum over his reported income.

Mr. MacMahon represented to your Honor, on page 1906 and 7 of the record, which I gave you this morning, with Mr. Leath answering the questions— (2239) between the two of them they told your Honor this:

"Mr. MacMahon: Your Honor, that figure, the excess investments and expenditures of Frank Costello in excess of his reported gross income actually is unreported income.

"By Mr. MacMahon:

"Q. Is that the fact, Mr. Leath?"

This is the private session befor your Honor.

"A. Yes, sir.

"Q. And that money was used up, is that right? A. Yes.

"The Court: Within what period?

"Mr. MacMahon: In the period 1937 through 1945, your Honor."

This is the very figure, $202,865.35 that they are now cross examining the witness about and asking him whether or not the same amount is not still with the City Clerk to the tune of $27,000, and the other amount in your bank account; and you represented to the Court that it was spent.

And that is what I have to say as to why these assessments should go in because they show the Government had claimed that amount was assessed more than that.

The Government cannot take two positions. (2240) They cannot hide behind the door, on the one hand, and come out and say we have spent money. It doesn't add up.

We base our calculations on what they say is a fact. If it is not a fact, we are wrong. So are they.

The Court: Does that conclude your argument?

Mr. Fennelly: Yes, sir.

The Court: The objection is sustained.

Mr. Fennelly: Then I ask your Honor to accept them up to the point of $202,865.81, which is the amount shown in their exhibit as having been expended over and above gross income for that period.

The Court: That is a new offer?

Mr. MacMahon: Your Honor, same objection as to that.

The Court: Same ruling.

Mr. Fennelly: All right. Then, your Honor, I would like to offer in evidence Mr. MacMahon's statement to you that that money had been spent, which is the $202,000 during the period up to 1945.

The Court: Do you object to that?

Mr. MacMahon: Yes, your Honor.

The Court: Same ruling.

Mr. MacMahon: I want to say at this time—

The Court: I have ruled, now.

Mr. Fennelly: Then we are ready to proceed, your (2241) Honor.

The Court: Very well. Call back the jury.

(Jury present)

Mr. Fennelly: Your Honor, in view of the offer that we have discussed, I would like to mark for identification a portion of the—

The Court: You may mark it, if you wish, but if you describe it—you want to call it certain pages of the—

Mr. Fennelly: I guess it is already in the record per statement, so I don't need—

The Court: You actually read it during the argument.

Mr. Fennelly: Yes.

The Court: I think your record is protected on it, Mr. Fennelly. You gave the page number and actually read the part that we were discussing.

Mr. Fennelly: May I look, please, at the excerpt of the affidavit of Mr. Costello that you examined the witness about, and also the affidavit itself, which has a corresponding number?

(Papers handed to Mr. Fennelly)

Mr. Fennelly: May I look at this a moment, your Honor?

The Court: You may.

(2242) (A pause)

The Court: What is that exhibit number?

Mr. Fennelly: Exhibit 350 and 350-A for identification.

The Court: All right, thank you.

Mr. Fennelly: 350 and 350-A for identification.

(A pause)

Q. Now, Mr. Sweeney, if it is correct as indicated on the Government's exhibit that $2,865 had been expenditures for investments and otherwise over Mr. Costello's gross reported income, if the assumption that that is true in the Government's exhibit you merely used that same figure in your schedule, did you not, Defendant's Exhibit III? A. That is correct.

Q. And the system that you used to arrive at how much cash would be available for expenditure at the beginning of January 1946 is based on the proposition that you start off with so much at the starting point and you list all of your receipts and add them up, and you take all your disbursements for each year and then you arrive at the balance; is that right? A. That is it, yes.

Q. So it is a matter of arithmetic, addition, isn't it, and subtraction? A. Yes, sir.

(2243) Q. Now, the net worth arrived at by the Government is quite different, is it not? A. Yes.

Q. That is based upon an accounting theory? A. Yes.

Q. And if the starting point of the net worth theory is

inaccurate, the whole structure built upon it falls; isn't that correct? A. That is correct.

Q. For example, to arrive at a net worth statement don't you have to know how much cash there is on hand? A. You do.

Q. And there is no evidence of how much cash Mrs. Costello had on hand as shown in this schedule, is there?

Mr. MacMahon: Your Honor, I object to the form of the question; it calls for a conclusion.

The Court: Read the question to me.

(Question read)

Mr. Fennelly: It has already been—

The Court: What do you mean by "this schedule"?

Mr. Fennelly: 362. It has already been so testified, your Honor.

The Court: Overruled.

A. No cash is shown for her.

Q. And to arrive at a correct and accurate net worth statement, each item, each asset has to be recorded, (2244) does it not? A. Yes, sir.

Mr. Fennelly: Now, might I not have the 1937 statement to Ronayne by Mr. Costello, and also the 1939 one?

(Handed to Mr. Fennelly)

Q. Now, Mr. Sweeney, I notice that the Government has taken down for 1937 on their Exhibit 362 an item of $9,500, being the investment in the Kastel partnership as of October 18, 1937; correct? A. Yes, sir.

Alfred E. Sweeney—for Defendant—Redirect

Q. You have an exhibit there, have you? A. Yes.

Q. Is that 362? A. Yes, sir.

Q. Now, you were asked if that were not taken from Government's Exhibit 23, which was the statement of Mr. Costello made to the special agent Ronayne on October 18, 1937, which is the starting point of this net worth statement, and in that the prosecutor pointed out to you that Mr. Costello had said that he had invested about $9,500, between nine and ten thousand dollars, in June or July, 1935; right? A. Yes, sir.

Q. Now, I also call your attention in this very same statement that agent Ronayne took from Mr. Costello, that "another asset you probably forgot to mention is your share of income on this partnership of Kastel's, (2245) is that right?" I mean the answer, "That is right;" is that right? A. Yes, sir.

Q. Now, Mr. Ronayne was reminding Mr. Costello that there was another asset, the value of the Kastel partnership as of the date of this statement, October 18, 1937; right?

Mr. MacMahon: Your Honor, I object to that question.

The Court: Sustained.

Q. Well, now—

The Court: The exhibit speaks for itself, and you may question him if you wish about that.

Q. Well, I have just pointed out to you that Agent Ronayne did remind Mr. Costello that he had another asset in the Kastel partnership, the value of which had not been given; isn't that right?

Mr. MacMahon: Your Honor, I object.

The Court: Sustained. You pointed out what the statement says and you may inquire as to that.

Q. Now, if the $66,000 that came from Bayou Novelty through the Kastel partner to Mr. Costello, and that was Mr. Costello's share for 1937 from Mr. Kastel, if that had not been paid on October 18, 1937, the net worth of Mr. Costello, under the Government's statement, (2246) Exhibit 362, would be $66,000-odd more than as shown, isn't that right?

The Court: As of what date?

Mr. Fennelly: October 18, 1937.

A. Yes, sir.

Mr. Fennelly: Now, could I have, please, that exhibit of Murphy's, that schedule of Louisiana Mint?

(Mr. Pierpoint hands to Mr. Fennelly.)

Q. Now, it has been testified, and apparently one item that accountants have agreed upon and that is that if you have a partnership and the earnings have accrued as of a certain date and are put in the partner's account, credited to the particular partner's account, that his interest in that partnership represents the earnings and capital, whatever is in the account as of a given day, is that right? A. That is correct.

Q. That is, when his earnings have not been drawn upon, they stay in the account so that his value in the partnership as of a given day represents the amount in the account of earnings that have not been drawn upon; right? A. Yes, sir.

Q. Now, in Government's Exhibit 362 they have fixed the value of Louisiana Mint Company, as of Mr. (2247) Costello's interest—

The Court: Which is 362-B.

Mr. Fennelly: That is right. Schedule B of 362.

Q. They have fixed the value of Mr. Costello's interest in Louisiana Mint at $17,636.40.

Now, the Government had the accountant Murphy, who was the accountant for the company, prepare a schedule showing what the value of Mr. Costello's interest in that account was as of the end of December, 1945; right? A. Yes, sir.

Q. And isn't the figure on that account $22,832.87 as of December 31, 1945? A. Yes, sir.

Mr. MacMahon: Your Honor, I submit the schedule speaks for itself.

The Court: He just asked him and he said it is. All right.

Q. And that is some $5,000-odd more than the value that the Government has put in their exhibit fixing Mr. Costello's interest as of that date? A. Yes.

Q. So that the Government has understated Mr. Costello's interest in Louisiana Mint Company as of December 31, 1945, by something over $5,000?

Mr. MacMahon: Your Honor, I object to the question; (2248) it calls for a conclusion.

The Court: Sustained.

Mr. Fennelly: Now, have you JJ?

Mr. Seymour: It was left with Mr. Sweeney before lunch.

Alfred E. Sweeney—for Defendant—Redirect

Q. Have you Exhibit JJ there? A. No, sir.

Q. I will ask you to look at a copy instead. Now, as to this $27,200, that was lost in the taxicab, you didn't record the receipt of that in the year 1945 period, did you? A. No, sir.

Q. And you recorded it in 1947 at the time that Mr. Costello got it back from the police department, isn't that right? A. That is correct.

Q. And in the meantime, since 1944, it had been at rest in the police department and that is why you didn't record it as of the 1944 date? A. That is correct.

Q. The disbursement of that money is recorded through the payment of some $24,000 in taxes to the United States Government, is it not? A. Yes, sir.

Q. And the balance do you record as receipt to Mr. Costello in 1947? A. Following Schedule 263, yes.

(2249) Q. Now, then, you were asked some question about whether or not this $27,000 was not included in the $202,000 according to their schedule, do you remember? A. Yes, sir.

Q. The Government schedule says $202,000-odd as of 1945 has been expended, doesn't it? That is what it says? A. Those are the words, yes.

Q. That is what it says, "expended"? A. Yes.

Q. You, in your Exhibit III, you followed the figure of the Government as having been expended? That is what they contend, don't they? A. Yes, sir.

Q. Let us take a look at something else about this schedule 362. Without taking a single figure from any place at all, just taking it from Exhibit 362, would you, and work along on this basis—well, take the cash, what is the cash balance as shown on Exhibit 362? A. Which date, sir?

Q. On October 18, 1937. A. $31,154.31.

Q. And according to 362 what are the gross income investments—what is the gross income reported by Mr. Costello? A. $269,516.87.

Alfred E. Sweeney—for Defendant—Redirect

(2250) Q. That is for the entire period 1937, from October 18th to December 31, 1945, isn't that correct? A. Yes, sir.

Q. Then what are the investments and expenditures of Frank Costello in excess of his reported gross income as claimed by the Government? A. $202,865.31.

Q. And what is the gross income as shown on the schedule by Loretta Costello? A. $32,925.05.

Q. And taking the figure of the Phil Kastel investment, as taken by the Government on 362, how much is that? A. The liquidation, $9,500.

Q. And the loan receivable collected? A. 5,000.

Q. As shown by 362? A. $5,000.

Q. And the mortgage proceeds net? A. Ten thousand eight—excuse me—ten thousand six—eight four naught two.

Q. Would you give me the total amounts of those figures? A. $568,067.75.

Q. Then let us take the expenditures on those figures, on the schedule. A. Total expenditures, $312,007.73.

Q. And the investment shown in Beverley Country Club? (2251) A. $60.

Q. And in 79 Wall Street? A. $52,500.

Q. And in the real estate, Sands Point? A. 30,000 gross.

Q. And the savings bonds? A. 5,175.

Q. And New York Telephone Company deposit? A. $150.

Q. And the repaid loans on the loans payable account? A. $6,000.

Q. What would the total of those expenditures be? A. $465,832.73.

Q. That is, investments and expenditures, right? A. Yes, those items that you have just read off.

Q. Based on those figures, that is, on the Government's own schedule—

Mr. MacMahon: Your Honor, I object to this constant characterization. If he has questions to ask, he should ask without characterizations.

The Court: Overruled.

Q. Did you total those figures for me? A. The disbursements?

Q. Yes. A. Yes, $465,832.73.

Q. What is the cash balance according to those figures as of December 31, 1945? A. $102,235.02.

(2252) The Court: Is that a cash balance or is it merely a difference between the two groups of figures that you arrive at?

The Witness: It is a difference between the two groupings of receipts and disbursements, yes.

The Court: You characterized it as a cash balance, didn't you?

Mr. Fennelly: I may have—

The Court: Is it intended to suggest that they represented cash either in hand or in bank?

The Witness: Yes.

The Court: That is all I am trying to find out. Either cash in hand or cash in bank.

The Witness: Yes, sir.

The Court: By "cash" as you use it in that answer, do you mean actual currency?

The Witness: Currency or bank account, yes, sir.

The Court: Very well. I just wanted to find out.

Mr. Fennelly: That is all.

Mr. Pierpoint: That is all, your Honor.

The Court: Very well.

(Witness excused.)

Mr. Fennelly: The defendant rests, your Honor.

Colloquy

The Court: Does the Government rest?

Mr. MacMahon: The Government rests.

(2253) The Court: Both sides rest.

It is now 3 o'clock. We have an hour and a half to hear any motions that counsel may desire to address to the Court.

Gentlemen, I assume you will be ready for summations tomorrow?

Mr. MacMahon: Yes, your Honor.

Mr. Fennelly: At your Honor's direction, I am always ready.

The Court: Well, I'll waive that one.

How long do counsel think that they will need to adequately present their arguments to the jury?

Mr. Fennelly: Well, I would estimate, and I haven't planned it out, so I couldn't tell your Honor accurately—

The Court: Before you make an estimate, Mr. Fennelly, let me tell you what my rule is and then you and I will be more nearly on common ground. I am inclined to be quite liberal with counsel in the summation of a long and important case, and I am inclined to give them as much time as they represent they will need. But, on the other side of the ledger, to keep the analogy we have been using these weeks, I require that they adhere strictly to the estimate.

(2254) So, if you say X hours or X minutes, I shall hold you exactly to that and not X-plus. Of course, you may always take less than you ask for, but you will not be granted more.

Mr. Fennelly: Suppose I said 4 hours then and hoped to finish in 2?

The Court: If you said 4 hours I would limit you because that, I think, is an extraordinary request for a case of this kind.

Colloquy

Mr. Fennelly: I would think that it would be, let us say, 2½ hours. I would hope to try to finish as soon as I can, your Honor.

The Court: Very well. You will start at 10.30 tomorrow morning. You may have until 1 o'clock. Very well.

And how much do you need?

Mr. MacMahon: About an equal amount of time, your Honor.

The Court: That means that we will take tomorrow with the summations and the Court will charge the jury on Thursday, at the opening of Court on Thursday.

Very well.

Now, ladies and gentlemen, you are going to be excused until 10.30 tomorrow morning. All the evidence (2255) is in but you haven't heard the closing arguments of counsel, in which they will suggest to you what they think the evidence shows and what inferences they think you ought to draw from the evidence.

Please remember my instructions: Don't talk about the case among yourselves and don't try to make up your own mind and analyze the evidence until after you have heard the arguments of counsel.

As I shall tell you in my instructions, you are not bound to follow their suggestions, but at least you ought to listen to them and give them such effect as you think they deserve; and then you ought to listen to the Court's charge on the law that must be applied to the facts as you find them.

So please keep your minds completely open. Don't talk about the case among yourselves or with anybody, and don't be looking to find any summary in the newspapers. You pay attention only to the evi-

dence and the arguments and the instructions of the Court.

You are excused now until 10.30 tomorrow morning.

(Jury retires.)

The Court: Gentlemen, I think before you make your closing arguments, we might take a short recess (2256) for about ten minutes in order to give you an opportunity to assemble your ideas, and if you need a little more, let me know and we will give you that additional time.

(The following proceedings were had in the absence of the jury:)

Mr. MacMahon: Your Honor, at this time the Government would like to hand up a memorandum of law. And may the record note that I am handing a copy to defense counsel.

Mr. Fennelly: There are some supplemental requests, your Honor; I regret we haven't had them to you sooner.

The Court: Very well. Then, I take it, a copy of those supplemental requests has been given to the Government.

Mr. Fennelly: Yes.

Mr. MacMahon: Yes.

The Court: Very well.

Mr. Fennelly: May I renew now, your Honor, my motion made at the—

The Court: Will you wait just a minute while I look at this?

This memorandum that you have handed me, Mr. MacMahon, I see consists of about 20 pages, with a

fairly substantial amount of citation in it. If your (2257) thought that I could read it and pass on it now I thank you for the compliment, but I am afraid I can't.

Mr. MacMahon: That was not my purpose, your Honor. I thought it might aid you in considering the requests to charge.

The Court: Oh, it is on that.

Mr. MacMahon: Well, it is the general field of law.

The Court: I see. Thank you very much.

Insofar as it affects motions that are now to be argued, maybe I will have to reserve decision and think about this overnight.

Very well. All right, Mr. Fennelly.

Mr. Fennelly: I renew the motion made at the close of the Government's case including a motion to—

The Court: Will you restate the motions? You may amplify and argue, if you wish, but you need not if you desire not to. But I should prefer you to restate the motions.

Mr. Fennelly: Well, I would have to go back and get my notes.

The Court: Well, we will wait. We have time.

Mr. Fennelly: I move to strike from the evidence the testimony and exhibits as to the purchase of a Philco air conditioning machine, on the ground (2258) that there was no proof that the Costellos had paid for it.

I also move to strike the—

The Court: Well, that motion is denied.

Mr. Fennelly: I also move to strike the testimony and exhibits as to the purchase of a car, a Cadillac, in 1949, where the evidence shows that it was purchased by one Joseph Henschel, and there is no proof that Mrs. Costello paid for it.

Motions to Strike Certain Testimony Renewed

The Court: The motion is denied.

Mr. Fennelly: I also move to strike the testimony of Mrs. Thal, of Wilma Gowns, and the exhibits pertaining thereto as to an item of expenditure which is claimed by the Government had been made in December, 1949, because the evidence shows that there is no proof that that item was paid for in 1949, and Mrs. Costello's bank account indicates that no payment was made for it in 1949. It was purchased on December 13th.

The Court: That motion is denied.

Mr. Fennelly: I also move to strike the testimony of exhibits relating to the expenditures by Mrs. Costello, on the ground that there was no proof that the money that she spent was all from the husband, and in the Government's exhibit, Schedule 362, they have given no credit whatsoever to any money having (2259) been spent by Mrs. Costello of her own; and I call your Honor's attention to the fact that in 1948 there was a return to her of over $12,000 as a part payment on a loan which she had made to Crescent Music Company and received partial payment on in 1949.

The Court: I will reserve decision on that until I hear the Government.

Mr. Fennelly: I also move to strike Government's Exhibits 362, 363, 364 and the exhibits numbered with letters attached to each of those, on the ground that they do not reflect an opening net worth statement containing all of the assets of Mr. and Mrs. Costello upon which a proper net worth statement must be predicated, that they omit cash on hand of Mrs. Costello, among other things, and also the value of the Phil Kastel partnership, that is, Mr. Costello's interest in it as of October 18, 1937.

Motion to Dismiss Indictment

The Court: Motion denied.

Mr. Fennelly: On the same ground I move to strike Government's Exhibits 365 through 368 as the computations of tax made by the Government are on assumed figures which have proven to be untrue—or incorrect, I should say.

The Court: Does that complete the motion (2260) with respect to those exhibits?

Mr. Fennelly: Yes.

The Court: The motion is denied.

Mr. Fennelly: I move to strike all the exhibits and testimony relating to the net worth expenditure method, on the ground that the Government's own witnesses have testified that the items reported in the income tax returns were traceable to known sources and therefore could be computed, and that the method is used without any foundation being laid, under Title 26, Section 41 of the United States Code.

The Court: Motion is denied.

Mr. Fennelly: I move to dismiss the indictment, on the ground that it appears that there was no competent evidence before the grand jury upon which this indictment could be predicated, and that the Court in this case has examined the grand jury minutes.

The Court: The Court examined the grand jury minutes at one time in this case when the witness Ronayne was on the stand, and as the Court announced at that time, it was for the purpose of complying with your request, which was to be advised as to whether or not there was any testimony by Ronayne before the grand jury which was different from the testimony which (2261) he gave upon the stand, and the Court examined it for that purpose

and advised that the Court found no such difference or contradiction.

Motion is denied.

Oh, did you want to add to it?

Mr. Fennelly: Yes. At which time I had offered to prove that Mr. Ronayne was not before the grand jury.

The Court: Well, if that is the point that you wish to make, I suppose that probably you might stipulate that right now as to whether or not he was. In view of the attitude that you took with all the rest of the witnesses, Mr. MacMahon, it seems to me that you might be perfectly willing to stipulate what the fact is with respect to whether or not Ronayne testified before the grand jury.

Mr. MacMahon: I would stipulate that he was not there, your Honor.

The Court: Very well.

Mr. Fennelly: I move for a judgment of acquittal, on the ground that there has been no proof of net worth at the starting point on October 18, 1937, with reasonable certainty, as the evidence shows that there was no proof of the amount of cash on hand of Mrs. Costello, nor of the value of the Kastel partnership, nor of the value of the assets of (2262) Bayou.

The Court: Denied.

Mr. Fennelly: And, also, that, therefore, there can be no proof as to the net worth commencing at the beginning of the indictment period.

The Court: The motion as amended is denied.

Mr. Fennelly: That is all I have, your Honor.

The Court: Very well.

Now, Mr. MacMahon, there is pending the motion to—I think it was a motion to strike the exhibits,

was it not, all exhibits and testimony with respect to the $12,000 item?

Mr. MacMahon: Well, your Honor, that $12,000 item is included in our schedule and is shown by the net worth computations made for that period.

The Court: Well, you point that out—

Mr. MacMahon: It reduces the net worth.

The Court: Would you point that out to me?

Mr. MacMahon: It is somewhat complicated, and maybe Mr. Pierpoint can do it a little better than I since he is thoroughly familiar with that schedule.

Mr. Pierpoint: Your Honor, on Schedule B, Government's Exhibit 363, the year 1947—

The Court: 363?

Mr. Pierpoint: Yes, your Honor.

(2263) The Court: On 363 itself, or one of the subsidiary ones?

Mr. Pierpoint: 363-B, your Honor, Schedule B.

The Court: Very well. Thank you.

Mr. Pierpoint: The end of December, 1947, there is an asset for Crescent Music Company, Inc. of $22,000. At the end of the year, at the end of the year 1948 there is no such asset. So that by that, the disappearance of that asset, the defendant has been given credit for having drawn that amount of money out of Crescent.

Similarly, with respect to loans which are shown under Loans Receiveable on the same schedule, they appear on 12-31-47, they do not appear on 12-31-48, so that the defendant has been given credit for moneys, for the disappearance of that asset as though the moneys had been drawn out.

Now, we made an adjustment to account for the moneys that were lost, leaving a credit to the defendant of the moneys that were drawn out amounting to this $12,000.

Colloquy

The Court: Very well. The motion is denied.

Any further motions? Does that conclude your motions, Mr. Fennelly?

Mr. Fennelly: Yes, your Honor.

(2263a) The Court: Very well.

Now, I would like counsel to come inside where we can look at these requests to charge and do it in a little more relaxed atmosphere than we can out here.

(Court and counsel retire to the robing room.)

(Adjourned to May 12, 1954, at 10.30 a.m.)

(2264) New York, May 12, 1954;
10.30 o'clock a.m.

Trial resumed.

(Jury present.)

The Court: Juror No. 11, Madam, would you come up, please, a moment?

Counsel come up.

(Following side bar discussion out of hearing of the jury:)

The Court: I have been advised that your husband is ill and you would like to get away. Of course, we cannot terminate the proceedings at 12 o'clock. We just can't do that. This case has been on trial for six weeks and we have to go along with the summations today and charge tomorrow.

How serious is your husband's illness?

Juror No. 11: Well, if it will be of great inconvenience,

then I will—I have somebody staying with him this morning and I will have somebody stay with him.

The Court: I don't hear you.

(2265) Juror No. 11: If it will be of great inconvenience, why, I will have someone stay with my husband. Somebody is staying with him this morning. He has walking pneumonia, is what the doctor called it last night, but he took this new drug and he is better this morning, but he is supposed to go to the doctor tomorrow morning, and it would be much more convenient if I could take him to the doctor. However, if it is going to be a great difficulty—

The Court: I am afraid, as long as you have somebody with him now, and I assume you could have somebody go with him to the doctor tomorrow—

Juror No. 11: I will.

The Court: —if necessary—

Juror No. 11: I will, if it is necessary.

The Court: —we just cannot interrupt the trial now except for the most extraordinary reasons. We have to go ahead with the trial.

Very well. So we will go on.

Juror No. 11: Thank you very much.

The Court: Not at all.

(End of side bar discussion.)

(The following proceedings in open court.)

The Court: Now, so that there won't be any doubt in anybody's mind or any wonder or mystery as to (2266) why we had this little conference at the bench, I will explain it to you.

The juror who was just up here has a husband who is not well and she was wondering if the development of the case today would be such that she might get off earlier than she

had anticipated. Having considered the fact that we have to give all the time that counsel need within reason for their summations, she has agreed to make other arrangements for the illness at home, and the case will go along. Now, what might have appeared to be mysterious is out of the case. And we will go along with the case of United States v. Frank Costello.

Are you ready, Mr. Fennelly.

SUMMATION BY MR. FENNELLY:

Mr. Fennelly: May it please the Court, Mr. Foreman, ladies and gentlemen of the jury: You have been most patient through these some five and a half weeks, listening carefully and attentively to the evidence, performing that most important duty, the most important, I think, next to a soldier in the service of his country. A man's liberty is at stake, at stake on a charge by a grand jury, where no witnesses appear except three agents who have no knowledge of the facts except hearsay.

The history of grand juries, as far as we are (2267) concerned in this country, goes back to England, where it was arranged that a grand jury of twelve citizens, more than twelve here, would stand between the Crown and the individual citizen to protect his rights. And our system is no good if an indictment can be predicated on hearsay. Due process of law, the Fifth Amendment of the Constitution of the United States.

Now, this indictment charges that Mr. Costello attempted to evade his income taxes for four years, 1946 through 1949. And before reviewing the evidence, and I will try to be brief, but there has been a lot of testimony, and it is a fairly complicated, if you will bear with me I will try to review with you as best I can all of this mass of material that has come in before you. And let me start, if you will, with the opening of the prosecutor.

Summation on Behalf of Defendant

When someone is running for political office they make campaign speeches, and when they are elected you take a look to see whether the promise has been performed. Let us, similarly, do that with the opening of the prosecutor.

He told you, five weeks ago, in about this fashion: That the indictment charges and we will prove for the calendar year 1946 Costello had a net income of (2268) at least $31,000 and that he owed a tax of $13,000, an evasion of $5,000 in taxes.

This was just five weeks ago when he told you that this is what he would prove to you.

Now, when we come down to the tail end with the witness, the last Government witness, that $5,000 sum has been reduced to $1,100 and a refund of over $200 is owed to Mrs. Costello. Promise No. 1 not performed.

Then he told you: We will prove that Costello in three of the four years involved in the prosecution, '46 through 1949, stated income running into thousands of dollars as miscellaneous income.

Well, what are the facts? The fact is that in one indictment year there is an indictment on the income tax return showing Miscellaneous and I think the figure is $8,000, and it is proven, and no one will dispute, that that income came from the Beverley Country Club, and the Government knew when it stood up before you that there were tax returns, information returns from the Beverley Country Club giving that information and there was no mysterious source about it.

Now, it is true that for the years 1949, '8 and '9, there is an item on each of those returns stating miscellaneous which Mr. Wolf testified was the result (2269) of betting winnings that Mr. Costello came in and told him that he had, and those are the only items in the entire returns which are not documented completely from the source from which the income came.

Now, the next item, the prosecutor also said: We will show you that Kastel was in the slot machine business down in Louisiana and we will show you that Costello's indirect investment in that business through Kastel was not more than $15,000.

Now, you remember this 362 exhibit we have been wrestling with for the last few days. Well, the prosecutor in his opening admitted that the value of that was $15,000. And what do the Government agents put in the exhibit? $9,500. Shortchanging Mr. Costello by $5,500. And they do that because Mr. Costello once said that that was the amount he thought he put in, but that was in '37, but in '39, when they asked him, he told them he thought he invested $15,000.

And the prosecutor in his opening to you said $15,000, but the Government agents, in working up the figures for you, they take the lesser amount and do Mr. Costello out of $5,500 as to his starting net worth point, which is an important element in this case.

Then we come to the next thing he told you about, about how they would show how much money he spends (2270) in night clubs. When the facts develop, the principal amount Mr. Costello spent in night clubs was a tab he picked up for the Salvation Army party, a gift, charity, of over $2,000. They didn't tell you about that. And, what's more, he didn't claim it as a deduction in his income tax because Mr. Wolf, his lawyer, testified that he, Mr. Wolf, had overlooked it.

Then there is this little item about the fine pajamas that we heard so much about in the opening; and my interest in it is the integrity of what you were told, and you were told that "You will hear that he," Mr. Costello, "spent $72 for a pair of pajamas." The fact was, and he knew it, that Mrs. Costello, his wife, gave him a Christmas present.

Then you have the statement that they will show you how he was dealing in cash from these New Orleans companies;

Bayou Novelty used to give the money to Mr. Kastel to send to Mr. Costello; that Mr. Costello was Kastel's partner. And the testimony was that that money was delivered in cash, but let's take a look at the record and see whether the Government didn't know all about it.

For people dealing in cash, the Government has done pretty well. For the fiscal year 1935 the Bayou Novelty Company reported net income to the Government of (2271) over a half million dollars, $506,000. Mr. Costello got his partnership share through Mr. Kastel, which is reported in his income tax, as to which there is no dispute.

Then for the fiscal year of 1936 Bayou Novelty reports $451,000 tax. These companies that dealt in cash, every nickel of it reported.

And for the 1937 fiscal year, $140,000.

Now, one other thing about the prosecutor's opening that I would like to call to your attention: After he had finished opening I asked a question, and the question was for your benefit as well as mine, and this is what I asked and this is the response:

Question by Mr. Fennelly:

"Would your Honor ask the prosecutor for my benefit and for the benefit of the jury whether there is any known source of income for the years 1946 through 1949 which is not reported in his income tax?

"The Court: Mr. Fennelly, you have asked a question. I see no evidence on Mr. MacMahon's part to answer it."

Could he not have been frank enough to tell you and me that there was no such evidence? That they had no such proof and they did not intend to prove any such case?

(2272) There is not a five-cent piece of income anywhere for the years 1946 through 1949 that the Government can point to and tell you, "Mr. Costello did not report in his income tax," but they weren't frank enough to tell you at

the outset of this case, and that is the way the proof stands today.

What is the nature, then, of this case? Having no proof whatsoever that Mr. Costello failed to report any income, the Government adopts a theory that if you spend more than you earn, plus what they can show as to your starting net worth, that they want you to assume that that is income and, therefore, convict.

Well, it would seem to me to be proper procedure to first find out in some civil tribunal whether in fact there was any income tax due even on their theory. But before that, we have Mr. Costello's indictment, before any such determination is made, and we are here, then, to try this issue before you.

The Government has taken the date of October 17, 1938 as their starting point of net worth, and the net worth on that date is the very foundation of the case; and if the Government has failed in its proof, to prove all of the assets, show what they were, then the whole structure built on that fails.

This net worth statement, which was a statement (2273) given by Mr. Costello to Mr. Ronayne, who was an agent, who was, I think, about the second witness in the case, has several interesting aspects:

Mr. Ronayne admitted on the witness stand that when he examined Mr. Costello, Mr. Costello had no preparation or warning, as to sit down for five days in advance and determine what your net worth was. He just sent for him and he came in, and I doubt if anybody did that to me I could tell you what my net worth is, even though it may be pretty small, but you would have to sit down and do a lot of thinking about things to tally it up, particularly if you have interests, and one of these interests was the asset in the Kastel partnership.

And in the statement itself it appears on the face of it that Mr. Costello had forgotten to mention the asset and

Mr. Ronayne pointed out to him in a question, he said, "Another asset you probably forgot to mention is your share of the income on this partnership of Kastel's." And Mr. Costello said, "That's right."

The value of that asset as of October 18, 1937 is one of the issues before you.

Mr. Ronayne, on the witness stand, also testified that he did not take a statement of net worth from (2274) Mrs. Costello, and that too is an important issue in this case because, without proof of Mrs. Costello's net worth, there is no case. Without proof of the value of the partnership interest in Kastel, there is no case.

So, let us examine then the factors going to make up the net worth as of October 18, 1937.

The Government Exhibit 362 sets forth what they claim it to be. Well, they have, first, the cash in banks, and right there Mrs. Costello had an account at the West Side branch of the Corn Exchange Bank as well as the one that is represented here, and the account represented here was opened by a check on the other bank. There is no proof in this case that that check on the West Side branch was for all the money in the bank. There is no proof in this case as to how much money Mrs. Costello had in the West 86th Street branch of the Corn Exchange Bank as of this date. There is no proof how much money Mrs. Costello withdrew and turned into cash prior to October 18, 1937 from this very account.

Then we have an item, currency on hand, and that they have listed as $30,000, which they get from the statement that Mrs. Costello gave to the Revenue Agent Ronayne when he estimated his cash on hand.

(2275) Well, suppose his estimate was wrong? Suppose he had fifty thousand instead of thirty? In the 1939 statement that Mr. Costello gave to the grand jury he told them that he had forty thousand in cash at that time. And

nowhere in any of these exhibits will you find that extra $10,000 reflected. Oh, they wouldn't give Mr. Costello any benefit in arriving at any value of even what he said he had on his own word. They want to limit him to that. So might it not be that Mr. Costello had loaned that amount in cash?

And then we come to a more glaring hole. What was Mrs. Costello's cash? Not in the bank. That they had a safe, as you have heard, at home. No proof whatsoever of how much cash Mrs. Costello had. And they will ask you to draw inferences and assumptions from a lot of facts which they say will indicate that she did not have it. These assumptions, to me, are wholly unfounded, and you can base no such inference.

Let me tell you of a wonderful example of basing an inference that somebody has no money because they act as if they did not have money.

Hettie Green, who was one of the richest women in this country, took her son to a doctor, and you probably read it in Life not long ago, and tried to (2276) take him into the clinic. Now, she was worth millions and she did not want to pay a doctor. So a doctor who saw her there happened to know her and he would not treat her in the clinic unless she paid. She would not pay, so she walked out. And she treated her son's leg herself, and the leg ultimately had to be amputated.

But the point is, here is a woman with millions, and if you were sitting as a juror in a case about the net worth of Hettie Green, somebody would offer you that as proof that she had no money. And knowing the fact that Hettie Green was a multi-millionaire you can see how much reliance you can put on any such assumption.

Then in this net worth statement, the next item investments $9,500, and that is the $9,500 from the Kastel partnership that they took from Mr. Costello's 1937 statement.

Now, in 1939 he had again testified and he said that the investment he had made originally in Louisiana was not $9,500 but $15,000. And that is the figure that the prosecutor spoke to you about in his opening. But when they come to put it in, wouldn't it be fair to at least say, "Well, he said he had fifteen thousand in the investment"? Wouldn't it be fair to put the $15,000 in? Oh, no. Not for Mr. Costello. They are cheating him out of original net worth statement (2277) on his own statement of $5,500. How hard up can they be to try to arrive at the facts to prove their case? Because when I come, and I will reserve it, to the year 1946 I will show you what that difference means, because they would be out on their own case.

Then the Investigator Murphy, the gentleman from the Revenue Bureau, who sits at the table here, testified at his examination, and I asked him rather carefully about it, they only went back to October 18, 1938, and I asked him several times. And why? Because—

The Court: You mean '37.

Mr. Fennelly: 1937. Excuse me, your Honor. '37.

(Continuing) If a transaction had occurred even a month before his investigation wouldn't have occurred.

Then in this net worth statement all that is set down on that Kastel investment is $9,500. Now, I have gone over with you the element about the investment being fifteen, but there is another element, the element that Mr. Ronayne called to Mr. Costello's attention that "You have forgotten to mention," which Mr. Costello agreed, what the value of his interest would be at that time, and no figure is fixed in the statement. Now, it happened that in 1937 the Bayou Novelty Company paid to (2278) Mr. Kastel some $66,000 which was Mr. Costello's share and that some time or other Mr. Kastel would pay that money to Mr. Costello.

Now, if that money was not paid by Mr. Kastel to Mr. Costello before October 18, 1937 that money would repre-

sent the value of Mr. Costello's interest in the Kastel partnership which was the item that Mr. Ronayne, the agent who took that '37 statement, called to his attention. So that that figure in their net worth, on that item alone, would be increased by $66,000.

Now, there is no proof in this case whether it was paid before or after that date. None. And you will be asked to assume that it was not. And, on the other hand, if you assume with me that it was, having no proof, then the net worth is upped by $66,000, and would be upped by an additional fifty-five hundred from the investment of—that is, the difference between the ninety-five hundred and the fifteen thousand that I have talked to you about, and it should be upped by the amount of Mrs. Costello's cash on hand.

So I say to you that on the proof, rather, that the proof is wholly lacking of what the true net worth was of Mr. and Mrs. Costello on October 17, 1938, the starting point of this case, without which there is no (2279) case.

Now, it is also admitted that Mrs. Costello had a Cadillac, and that is not included, and that Cadillac had been purchased I think some time within a year before. I think it was late '36, if I recall correctly, at a sum of some—I don't recall the figure, but the value of a Cadillac; I think somebody said $4,300; I don't recall. In any event, a true net worth statement should contain every asset. And I asked the Government agent—they admitted it was not in—and he said no, we don't put that in because you don't get cash out of it.

That is not the point. The point is, if you have a net worth statement it must be a net worth statement and it must contain every asset and every liability to show the truth. And any accountant who certified a statement, not having the assets or liabilities in that they knew about, would have his license taken away. But only certified pub-

lic accountants can certify statements. And I tell you that this statement is false and does not even pretend to be honest.

Now, why is it that they do not include it? Well, let me try to explain it to you. It is to the Government's advantage in a net worth case to have the original net worth start as low as possible and to show (2280) an increase over years, and upon that they base an assumption that you have been getting money that you haven't reported. So if they made an honest net worth statement and included an item like the Cadillac, the Cadillac deteriorated in price and was ultimately sold for $250 some years later, so you would have a loss in net worth of the difference between the $250 and whatever purchase price you paid for it, four thousand or what have you. And that would be reflected in this statement, decreasing the net worth. And, the Government doesn't like that, so they give you an explanation of a hybrid theory that because it does not produce any cash therefore they didn't include it. Well, they would have to sell someone else than me on that one, because there is one thing, as sure as I am standing here: No net worth statement is honest unless every asset and every liability is put in there at its value.

And let us look at this fine thing, Exhibit 362, which is a trumped up concoction if I ever saw one. Ladies and gentlemen, it would be so simple to take an original amount of assets, cash, and instead of going on and carrying this net worth up and down with adjustments, to say: You have so much money when you start, I take all your receipts for all these years and add that with what you started with and I take all of your (2281) disbursements for all these years, and there you are, simple arithmetic, and you have an answer. So, why wasn't it done? Because they would not like the look of the result. No other reason.

Now, on this exhibit you start with a column, October 18,

1937, showing a net worth, and then you skip from then until December 31, 1945. And I asked the witness Leath if he would let me have his papers showing the transactions intervening so that I could check whether he had included them all and hadn't missed something or hadn't juggled something. "I have no papers," said the witness, "I didn't need any." Well, I would need them and I needed them to cross examine him about them. And that is why there are no papers.

Like the other Government Agent, Matheny—you remember that gentleman some weeks ago—testified he made a transcript of some records of that old Bayou Novelty Company. Do you remember that? And he produced a part of them. And, you know, as you work as counsel and this mass of papers comes at you, it is not easy to pick out and look at them, find errors right away. But I looked at this. And he said he had made a transcript of the books, and I noticed he had it only for a part and had obviously carried forward a figure. I asked him where the rest of his papers were. Do you (2282) remember his answer? "I lost them three weeks ago." Why did he lose them? He lost them because they are going to ask you to rely on what he tells you, and as to the remaining portion when he did admit at least that there was more money shown in his earlier papers that he lost. Most unusual for a Government agent; three weeks before the trial for some man's liberty, to lose his papers, where he offers part of the papers that he hasn't lost as evidence against you.

Well, we have a few other interesting items on this fine exhibit, and one is the bottom calculation. They wind up with $202,865.81, which they describe as investments and expenditures of Frank Costello in excess of his reported income. And I insisted that they add some other notation to it because, to me, it was obviously untrue. So they at least added, and I don't approve altogether this, but at

least I got this much, "As claimed by the Government."

The position taken by the prosecutor is that this $202,000 was investments and expenditures and that it was gone. I mean, whatever was in an investment was an investment, and whatever the rest of it was was expenses—gone with the wind, and that is the position of the man who prepared it.

On the other hand, the team doesn't quite all (2283) agree, on the other hand, Mr. Pierpoint, cross examining Sweeney, and Sweeney was having great difficulty with this, Mr. Pierpoint asked him if the cash, the $27,200, that was sitting in the Property Clerk's Office, which had been lost and which Mr. Costello was reclaiming, whether or not that wasn't in this last figure, and Sweeney was having great difficulty with it, and I don't think—I doubt, at least, whether any of you quite appreciate why he was having the difficulty, and this is the reason, and I had trouble with it, and the trouble is that their theory, on what they say, is untrue. The $27,200, if it were spent, it certainly wasn't invested and it wasn't spent, because it is sitting—and Mr. Costello found it—and it is in the Property Clerk's Office, and he is reclaiming it, and it is in there, and Mr. Sweeney couldn't understand, as an accountant, how anybody could say it is an investment and an expenditure, when it was neither invested nor expended.

And the same is true for the item "Cash in Banks," where you get $29,000. That was neither invested nor expended and yet they end up with a total of $202,000 which they assert to the Court and to you has been dissipated by December 31, 1945 and is gone, when the truth is, part of it was in the banl and the (2284) other $27,000 was in the City Property Clerk.

Would your Honor like to take a short recess now?

The Court: If you would like it, we can do that, yes. We will take a short recess now.

Summation on Behalf of Defendant

(Jury retires.)

(Recess from 11.40 a.m. to 11.50 a.m.)

(Jury present.)

Mr. Fennelly: Now, if I may take up those charity accounts, the accounts opened by Mr. Wolf for Mr. Costello under various headings, "Charity Drives" and "Charity Funds," the money that Mr. Costello would collect on charity drives for Legal Aid Society, Salvation Army, there were two others, cannot think of their names, one of them was the Catholic Boys Brigade, but, in any event, there had been some suggestion that he was—by the prosecution—that he was contributing this as his money. And the fact was demonstrated very clearly that the money he was collecting from his friends was contributed, and that the people who received it, Mr. Hoving, Walter Hoving of the Salvation Army, Benjamin Buttenwieser, a Kuhn Loeb partner, Legal Aid Society, William Gibbon, president of American Brake Shoe Company, they all knew and had asked Mr. Costello to conduct these (2285) drives and they knew that the money he was getting was not his own money but he was collecting it from friends, except in so far as he did make personal contributions, which he did do, as you know.

And you may wonder about why he was making such large personal contributions, and could it be that anyone, knowing they have cancer of the throat, would make contributions knowing they can't take it with them?

The prosecutor said in his opening there was a lack of books and records.

Well, there are 88 cartons of records sitting in this Court house which, when I offered them, asked to have them marked for identification, the prosecutor said, "Oh, it will just clutter up the record," and those 88 cartons of records

are the records of these New Orleans companies, Crescent Music Company, Louisiana Mint, Beverley Country Club.

Now, each of those companies, from Crescent to Mrs. Costello; and Louisiana Minf, and Beverley, and the Kastel partnership—when a partnership or a corporation pays you something, they have to send a slip to the Government reporting that they have so paid you, so the Government would always know, and you don't need the records of the company. Just exactly as you might as well as United States Steel Corporation, as if you (2286) should keep their records. That is about the situation of Mr. Costello with relation to these companies. He was a partner. The records were kept there, and every dollar that he received from these companies was reported, and practically all of it, I can only think of one item, if I recall properly, that didn't go through his bank account, and you don't need records other than that. But there are 88 cartons of records from New Orleans sitting in this Courthouse.

Well, I was looking for an exhibit, but never mind it. A defendant's exhibit was put in evidence here as to the origin of the partnership of Crescent Music Company by Mrs. Costello. The original partners in it did not include Mr. Kastel. There was a Mr. Joffe and a lady, if I recall correctly, by the name of Eisenberg. Defendant's Exhibit P. And Mr. Kastel was not one of the original parties.

This agreement was signed in New Orleans on November 19, 1943 and witnessed by Charles Murphy, who was the accountant from down there, and Albert Courrie who was a lawyer down there.

When that agreement was signed, according to the hotel records of the Hotel Roosevelt, which are also in evidence here, Mrs. Costello was down there alone and had been there for several weeks. And she had, if you (2287) will notice, as of that stay there, she had a safe deposit box at the hotel, and I think there will probably be some suggestion to you that that was not her investment.

Summation on Behalf of Defendant

Well, the proof is that she was the one who invested the money in it, that she was down there alone, that she had a safe deposit box, and that it was her investment.

Now, the witness Murphey—we have had a series of them so I have to define to you which one; I think there were four or five—this one that I mean was the man from—the original witness in the case, who was from the Collector of Internal Revenue Office in the Uptown District, and he testified that, and I prefer to read it to you so we will have no doubt about it, "Question"—I was trying to find out from Mr. Murphey if it were not the fact that as of February 20th, 1947 all of the taxes of both Mr. and Mrs. Costello had been paid, and I don't know whether you remember the incident, but he said it would take some time to look at his assessment list, and after the Court told him to go ahead he came back with the answer, and he didn't take as long as he gave us reason to believe that it would take to figure out this difficult problem from his list.

(2288) "Q. No. What I want you to tell me"—this is my question to him—"if it isn't a fact that on the day that the payment was made on February 20th, 1947 that all the tax liability due to the Government at that date had been discharged?"

Now, we get the answer several pages later:

"Yes, sir, it was paid up to that date, sir."

Now, in the period coming up to 1946, which is the indictment year, which I shall develop in a moment, we have a few years before that I just want to call to your attention because as they come into '46 it develops a necessary continuity. In 1943 Mr. Costello had reported sixty thousand eight hundred and some odd dollars. In 1944, seventy-one odd thousand dollars. And in 1945 again some $66,000, and had paid a tax in '45 of $23,000. Now, his payments on his estimated declaration in 1945 had been $44,000 that he had

paid, and adding to the withholding tax that had been taken out of some $800 it made the taxes that he had paid to the Government some $45,000. His tax liability had only been $33,000, so he was entitled to a refund of close to $12,000 in 1945.

Now, coming to the year 1946—excuse me for using this rail in front of you; I have no other place to put the material.

(2289) We come to 1946, which is the first year in the indictment, and the Government contends that he should have reported a net income, according to their exhibit, and this is what he is indicted for, $25,214.67, whereas the Government says he only reported, according to his income tax return, $23,673.90, a difference of $1,500 net income unreported.

Now, let us take a look at this because it is almost incredible that a man should be indicted for this. Do you remember this great goings on about whether or not a payment had been made out of Louisiana Mint in December 1945, or whether it was paid out in the year 1946?

If that payment were made in 1946 Mr. Costello is entitled to a refund, on the admission of the Government agent, of some $1,400. And that refund comes about not on account of the amount of income but because Mr. Costello did not take all the deductions he was entitled to, which the Government now admits and gives us in the return which they prepared.

May I have that exhibit, please, of Mr. Murphy, that December statement?

Now, Mr. Murphy, the account-from-New Orleans Murphy, testified that he could not remember when that (2290) was paid, the $5,000. And there is one account in evidence on this same company's books indicating that it was paid in 1946. And if it was, then on the Government's own theory Mr. Costello is entitled to a refund of some $1,400.

Could I have, I think it is, 151? Have you got 154?

And this statement of the accountant Murphy which he sent to Mr. Costello by letter January 3, 1946, signed by Murphy, saying, "Dear Mr. Costello: Enclosed find statement of Louisiana Mint Company for the month of December 1945." That statement does not show that there was any distribution in December 1945. Now, how could Mr. Murphy, if there had been a distribution, send Mr. Costello a statement of the condition of the company, the cash receipts and disbursements, saying that no such disbursement had been made to Costello if it weren't the fact?

Now, the record upon which the Government says that that indicates the contrary, and I think if you read it without looking at this (indicating), which to me is a conclusive document, because Mr. Murphy's whole balances would be out if they did not reflect any such statement and one had been made, and the exhibit following this picks up the exact same cash balance as (2291) of the end of December 31, 1945, that is, the cash balance Murphy picks up in his next statement for the beginning of 1946. Now, the record that is here, where there is a notation, I think it says, "Distributed December-January 1945" and refers to an amount, and to give the explanation would be quite simple, and that is that a bookkeeper making an entry—and it wasn't Murphy—should have written "Distribution for December 1945 and January 1946," and that would make sense and logic, because the amount that was distributed were the earnings from December 1945. And, after all, you don't distribute them, I would think, until the end of the month. Isn't that pretty sound?

But the difference of this one item alone means the difference in this case, on their theory, of Mr. Costello's conviction of a crime or getting a refund from the Internal Revenue Bureau.

And that is not the only item involved in this. This fine

set of figures that they have set up, do you realize that to arrive at these expenditures they have taken the testimony of that woman with dark glasses, Sylva Leichner, at face value, where she testified that he spent for flowers $2,000 per year, which amounts in the period up through 1945 to $16,000 for flowers in one shop?

(2292) Now, they have put in evidence the florist bills from other shops. And she had no records, you remember. And the only thing she could remember was that that was her estimate of what Mr. Costello had paid for flowers in the shop. Now, the other bills of all shops that they brought down, I think they were Goldberg and what have you, would be normal bills that people would have. Why, you couldn't spend two thousand a year, I think, at least I couldn't if all my friends died in one year.

And if you disbelieve that woman, then you carry over, instead of having expenditures, you carry over to this '46 period whatever amount you disbelieve that Costello spent in that shop. That vicious, malicious woman!

This income tax return of 1946 of Frank Costello, as he filed it, shows that he reported his net income and had paid taxes, between the withholding tax and what he paid on his estimated tax, in the sum of $22,031 and some odd cents. So that on the basis of his return he was entitled to and got a refund. On the basis of the Government's return, on their claim, he would still have been entitled to a refund of over $12,000.

Is that the evidence of a wilful evasion of (2293) income tax?

The truth is that, with the additional deductions allowed, which Mr. Wolf had not taken into consideration, for instance, Mr. Wolf did not take into consideration as a deduction a fee Mr. Costello had paid of $10,000 to Greenbaum, Wolff & Ernst, which the Government now allows him; is that evidence of wilful evasion of income tax? Mr. Wolf prepared his returns.

And similarly we go through the other years. One other thing I want to call to your attention before I leave the year 1946 and that is that the Government, in its theory, in their schedules they shift around from time to time, one time they take a net worth and then they say they are changing them to put you on a cash operation. Well, either one is all right, but they don't mix because they will not reflect the truth unless you take either one and follow them to their conclusions.

But coming to what they say, they change items because they don't produce cash to have to spend. So let us take a look at their schedule for the year 1946 as to cash available for expenditures. The cash on hand on December 31, 1945 amounted to $29,506, and on the Government's own chart; the gross of Loretta for (2294) the year—excuse me, Mrs. Costello—I have my note "Loretta," that is why I read it; I have never met the lady; and I wrote these out in the wee hours this morning—some $15,800, and the gross of Mr. Costello thirty-five thousand odd, totaling, that is, cash on hand at the beginning, their reported gross income, eighty-odd thousand dollars, and the total expenditures in the year, according to the Government's own exhibit, seventy-seven odd dollars. So that between the cash on hand and the reported income of both, there was more than enough to cover the expenditures claimed by the Government.

Let us take a look at the wonderful calculating they do on some of these items, and I think, of all of them, this one for 1948 is a classic. I have had a little experience with accountants, not much, but I always remember one that I had on the witness stand one day, who testified something in a case, he was on the other side, and he had omitted in a financial statement a conditional obligation of a very sizable amount of money—contingent obligation—and he neither included it in the body of the statement nor did he

have a footnote about it, and I asked him about it, and he said that "As a matter of good accounting practice, you don't have to include that."

(2295) And he had been on the stand a while, and somehow or other I had heard that he had written a book, that he was a professor, so I got his book and, sure enough, in his book was the statement completely contradicting what he said, and his book asserted that every asset and every liability must be shown in order to arrive at the true net worth statement.

Now, what do they do here on this 1938? And this is really marvelous! This has Danny Kaye's double talk beat a mile.

Mrs. Costello had losses, Crescent Music, one from a loan and one from an investment, totaling $36,000. Now, they write off the investment and, instead of taking the amount of the loss and writing it down as a loss on net worth, which would be an accurate and honest method of doing it, they say they take off, as I understand them, and they will try to explain it to you, and then they add back the total amount of the loss—do you remember that? That is what he testified to—to the net worth and, of course, that increases the net worth, which is the object of the Government in these cases.

Ladies and gentlemen, I don't know whether you remember, but that is the man that I asked, because I have to have things reduced to me in as simple equation (2296) as I can understand, and I hope all the jurors will understand, I asked that man, if I had a house with no insurance on it, and it was worth $25,000, what my net worth was, and he told me, $25,000.

And then I said to him, "Well, I have a fire in my house and the house burns down, and all I have left is the land, and that is worth $5,000." And I said, "What is my net worth after the fire?" "Well," he said, "$5,000."

What they have done in this schedule is to take the $20,000 I lost and no longer have because my asset is gone and they have added it back to the net worth, and that is what they are doing here. And they say, "Well, because it doesn't produce cash." Well, when I had the fire in my house, it doesn't produce cash either, and my net worth is only $5,000 after the fire, and no one can change it, not even an accountant for the Internal Revenue Bureau because you cannot alter simple facts, and accounting schedules are supposed to reflect the truth, and when they don't, they are false.

Then let me take a look at one other thing with you in this 1948 column on Government's Exhibit 363, on the question of the availability of cash for expenditures.

The closing balance on December 31, 1947 in (2297) Mr. Costello's account was $71,112.17. The total expenditures, as shown by the Government's exhibit, was $59,414. So that there was more in that account to start with than you needed for the whole year to make the expenditures, and the witness Leath, accountant for the Government, so testified.

In addition, however, Mr. Costello had gross income reported in his income tax return of some $33,000, which brings the amount he had available to $104,000, and every penny of the money in that bank account from these companies, Louisiana Mint, Beverley, tax had been paid on it.

And the witness Leath also testified to the same thing as to Mrs. Costello's account for that year. Mr. Leath, with relation to Mrs. Costello's account, my question, "So the fact is, "that even on his figure," Mrs. Costello had at the opening of the year more money than all her withdrawals for the year? In other words, she starts off the year with something over $24,000 and she withdrew eighteen thousand nine, is that right? "A. Yes, sir."

Then on the year 1949, on Government's Exhibit 363, on